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11 **BEFORE THE**
12 **MEDICAL BOARD OF CALIFORNIA**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

15 In the Matter of the Accusation Against:

Case No. 800-2021-077034

16 **STEPHEN BANISTER, M.D.**
17 **194 Gold Flat Road**
18 **Nevada City, CA 95959-3237**

A C C U S A T I O N

19 **Physician's and Surgeon's Certificate**
20 **No. G 23826,**

21 Respondent.

22 **PARTIES**

23 1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
24 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
25 (Board).

26 2. On or about December 15, 1972, the Medical Board issued Physician's and Surgeon's
27 Certificate Number G 23826 to Stephen Banister, M.D. (Respondent). The Physician's and
28

1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
2 herein and will expire on July 31, 2023, unless renewed.

3 **JURISDICTION**

4 3. This Accusation is brought before the Board, under the authority of the following
5 laws. All section references are to the Business and Professions Code (Code) unless otherwise
6 indicated.

7 4. Section 2227 of the Code provides that a licensee who is found guilty under the
8 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
9 one year, placed on probation and required to pay the costs of probation monitoring, or such other
10 action taken in relation to discipline as the Board deems proper.

11 5. Section 2234¹ of the Code, states:

12 The board shall take action against any licensee who is charged with
13 unprofessional conduct. In addition to other provisions of this article, unprofessional
14 conduct includes, but is not limited to, the following:

14 ...

15 (b) Gross negligence.

16 (c) Repeated negligent acts. To be repeated, there must be two or more
17 negligent acts or omissions. An initial negligent act or omission followed by a
18 separate and distinct departure from the applicable standard of care shall constitute
19 repeated negligent acts.

20 (1) An initial negligent diagnosis followed by an act or omission medically
21 appropriate for that negligent diagnosis of the patient shall constitute a single
22 negligent act.

23 (2) When the standard of care requires a change in the diagnosis, act, or
24 omission that constitutes the negligent act described in paragraph (1), including, but
25 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
26 licensee's conduct departs from the applicable standard of care, each departure
27 constitutes a separate and distinct breach of the standard of care.

28 (d) Incompetence.

1 Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or
ethical code of the medical profession, or conduct which is unbecoming to a member in good
standing of the medical profession, and which demonstrates an unfitness to practice medicine.
(*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.).

1 6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
2 adequate and accurate records relating to the provision of services to their patients constitutes
3 unprofessional conduct.

4 7. Health and Safety Code section 120370 provides, in pertinent part:

5 (a)(1) Prior to January 1, 2021, if the parent or guardian files with the governing authority a
6 written statement by a licensed physician and surgeon to the effect that the physical condition of
7 the child is such, or medical circumstances relating to the child are such, that immunization is not
8 considered safe, indicating the specific nature and probable duration of the medical condition or
9 circumstances, including, but not limited to, family medical history, for which the physician and
10 surgeon does not recommend immunization, that child shall be exempt from the requirements of
11 this chapter, except for Section 120380, and exempt from Sections 120400, 120405, 120410, and
12 120415 to the extent indicated by the physician and surgeon's statement.

13 (2) Commencing January 1, 2020, a child who has a medical exemption issued before
14 January 1, 2020, shall be allowed continued enrollment to any public or private elementary or
15 secondary school, child care center, day nursery, nursery school, family day care home, or
16 developmental center within the state until the child enrolls in the next grade span.

17 For purposes of this subdivision, "grade span" means each of the following:

18 (A) Birth to preschool, inclusive.

19 (B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.

20 (C) Grades 7 to 12, inclusive.

21 (3) Except as provided in this subdivision, on and after July 1, 2021, the governing
22 authority shall not unconditionally admit or readmit to any of those institutions specified in this
23 subdivision, or admit or advance any pupil to 7th grade level, unless the pupil has been
24 immunized pursuant to Section 120335 or the parent or guardian files a medical exemption form
25 that complies with Section 120372.

26 (b) If there is good cause to believe that a child has been exposed to a disease listed in
27 subdivision (b) of Section 120335 and the child's documentary proof of immunization status does
28 not show proof of immunization against that disease, that child may be temporarily excluded from

1 the school or institution until the local health officer is satisfied that the child is no longer at risk
2 of developing or transmitting the disease.

3 8. Health and Safety Code section 120372 provides, in pertinent part:

4 (a)(1) By January 1, 2021, the department shall develop and make available for use by
5 licensed physicians and surgeons an electronic, standardized, statewide medical exemption
6 certification form that shall be transmitted directly to the department's California Immunization
7 Registry (CAIR) established pursuant to Section 120440. Pursuant to Section 120375, the form
8 shall be printed, signed, and submitted directly to the school or institution at which the child will
9 attend, submitted directly to the governing authority of the school or institution, or submitted to
10 that governing authority through the CAIR where applicable. Notwithstanding Section 120370,
11 commencing January 1, 2021, the standardized form shall be the only documentation of a medical
12 exemption that the governing authority may accept.

13 (2) At a minimum, the form shall require all of the following information:

14 (A) The name, California medical license number, business address, and telephone number
15 of the physician and surgeon who issued the medical exemption, and of the primary care
16 physician of the child, if different from the physician and surgeon who issued the medical
17 exemption.

18 (B) The name of the child for whom the exemption is sought, the name and address of the
19 child's parent or guardian, and the name and address of the child's school or other institution.

20 (C) A statement certifying that the physician and surgeon has conducted a physical
21 examination and evaluation of the child consistent with the relevant standard of care and
22 complied with all applicable requirements of this section.

23 (D) Whether the physician and surgeon who issued the medical exemption is the child's
24 primary care physician. If the issuing physician and surgeon is not the child's primary care
25 physician, the issuing physician and surgeon shall also provide an explanation as to why the
26 issuing physician and not the primary care physician is filling out the medical exemption form.

27 (E) How long the physician and surgeon has been treating the child.
28

1 (F) A description of the medical basis for which the exemption for each individual
2 immunization is sought. Each specific immunization shall be listed separately and space on the
3 form shall be provided to allow for the inclusion of descriptive information for each
4 immunization for which the exemption is sought.

5 (G) Whether the medical exemption is permanent or temporary, including the date upon
6 which a temporary medical exemption will expire. A temporary exemption shall not exceed one
7 year. All medical exemptions shall not extend beyond the grade span, as defined in Section
8 120370.

9 (H) An authorization for the department to contact the issuing physician and surgeon for
10 purposes of this section and for the release of records related to the medical exemption to the
11 department, the Medical Board of California, and the Osteopathic Medical Board of California.

12 (I) A certification by the issuing physician and surgeon that the statements and information
13 contained in the form are true, accurate, and complete.

14 ...

15 9. Health and Safety Code section 120325 provides:

16 In enacting this chapter, but excluding Section 120380, and in enacting Sections 120400,
17 120405, 120410, and 120415, it is the intent of the Legislature to provide:

18 (a) A means for the eventual achievement of total immunization of appropriate age groups
19 against the following childhood diseases:

20 (1) Diphtheria.

21 (2) Hepatitis B.

22 (3) Haemophilus influenza type b.

23 (4) Measles.

24 (5) Mumps.

25 (6) Pertussis (whooping cough).

26 (7) Poliomyelitis.

27 (8) Rubella.

28 (9) Tetanus.

1 (10) Varicella (chickenpox).

2 (11) Any other disease deemed appropriate by the department, taking into consideration the
3 recommendations of the Advisory Committee on Immunization Practices of the United States
4 Department of Health and Human Services, the American Academy of Pediatrics, and the
5 American Academy of Family Physicians.

6 (b) That the persons required to be immunized be allowed to obtain immunizations from
7 whatever medical source they so desire, subject only to the condition that the immunization be
8 performed in accordance with the regulations of the department and that a record of the
9 immunization is made in accordance with the regulations.

10 (c) Exemptions from immunization for medical reasons.

11 (d) For the keeping of adequate records of immunization so that health departments,
12 schools, and other institutions, parents or guardians, and the persons immunized will be able to
13 ascertain that a child is fully or only partially immunized, and so that appropriate public agencies
14 will be able to ascertain the immunization needs of groups of children in schools or other
15 institutions.

16 (e) Incentives to public health authorities to design innovative and creative programs that
17 will promote and achieve full and timely immunization of children.

18 **COST RECOVERY**

19 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 **FACTUAL ALLEGATIONS**

26 11. In 2015, in response to decreasing rates of childhood vaccination and increasing rates
27 of childhood diseases, the California Legislature amended Health and Safety Code section
28 120325 to eliminate personal beliefs as a basis for exemption from required immunizations for

1 school-aged children. As a result, school-aged children were required to have immunizations for
2 10 vaccine-preventable childhood illnesses as a condition of school and daycare attendance, with
3 exceptions permitted only for valid medical reasons. It is the standard of care for physicians and
4 surgeons to only provide exemptions for vaccinations for valid medical reasons. The
5 determination of what constitutes a valid medical reason to avoid or delay a vaccine is established
6 by guidelines from the Centers for Disease Control's Advisory Committee on Immunization
7 Practices (ACIP), and the American Academy of Pediatrics.

8 12. In 2021, in order to track exemptions from vaccine-preventable childhood illnesses in
9 schools and daycare centers, California established the California Immunization Registry for
10 Medical Exemptions (CAIR), a database of vaccine exemption status, overseen by the California
11 Department of Public Health (CDPH). The CAIR database tracks exemptions issued to patients
12 with a record of the physician issuing the exemption, the type and duration of exemption, and
13 whether the CDPH determined the exemption was medically valid, or whether it was revoked.
14 When the CDPH revokes five or more exemptions from a physician, the CDPH is required to
15 refer the physician to the Board for evaluation as to whether the physician's conduct violated the
16 standard of care, and thus, warrants discipline against the medical license.

17 13. In this case, the CDPH revoked at least 13 separate vaccine exemptions issued by
18 Respondent and consequently referred Respondent's conduct to the Board for evaluation for
19 potential disciplinary action against his license. Respondent is a physician who practices out of
20 his home, under the practice name "Banister Holistic Medicine." Respondent is not Board-
21 certified in any specialty, although he participated in post-graduate training in the field of Family
22 Medicine. In all but one of the patient cases reviewed, the medical records showed that
23 Respondent had only a single visit with each patient, and that he issued the medical exemption on
24 that single visit.

25 14. In all the exemptions Respondent uploaded to the CAIR database, he listed himself as
26 the primary care physician, despite seeing most of the patients on only the single occasion that he
27 issued the exemption. Supplemental records show that Patient 8 has a primary care physician
28

1 who is a physician at Kaiser Permanente. On each of the CAIR forms Respondents uploaded to
2 the database, he certified that all of his statements in the form were true and correct.

3 **Patient 1²**

4 15. Patient 1 was a three-year-old boy when Respondent saw him for the first and only
5 time on or about March 20, 2019. Respondent documented a brief physical examination as being
6 normal. Respondent further documented that Patient 1 experienced random fevers. Under
7 “assessment,” Respondent documented that Patient 1 was generally healthy, with random fevers
8 and family history of vaccine reactions.

9 16. There is a note that appears to refer to a relative of Patient 1, a 19-year-old woman.
10 This may be the positive family history Respondent alluded to in the illegible documentation. It
11 reports that the female relative experienced fevers and immobility as a result of vaccine reactions
12 and a headache/stomach ache after the HPV vaccine, and that the relative’s brother has autism.
13 Although Respondent documented that Patient 1, and his relatives, had vaccine reactions, he did
14 not document review of prior medical records for Patient 1 or his relatives that potentially could
15 have provided more information about these vaccine reactions.

16 17. Respondent documented the plan as vaccine exemption. On or about March 20,
17 2019, Respondent provided a permanent vaccine exemption to polio, DTap, MMR, HIB,
18 Hepatitis B, Varicella, Tdap, HPV, Influenza, and COVID vaccines.³ On or about August 17,
19 2021, Respondent uploaded this medical exemption to the CAIR database for Patient 1. In the
20 database, Respondent documented “Other: Siblings with severe vaccine reactions” as the medical
21 basis for exemption for each of these vaccines.

22 18. Respondent did not document a history in Patient 1 that would support a medical
23 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
24 the routine childhood vaccines to Patient 1 without sufficient medical rationale for doing so.

26 ² The patients in this pleading are referred to by numbers in order to protect their privacy.
27 The identity of the patients will be provided to Respondent in discovery.

28 ³ Covid did not exist on March 20, 2019. Respondent explained in his interview with
Board investigators that he added the exemption for Covid and flu vaccines, by handwritten note,
after the fact. He did not update the record or exemption to accord with this fact.

Patient 2

19. Patient 2 is the sister of Patient 1. She was a two-year-old girl when she saw Respondent for the first and only time on March 20, 2019. Respondent documented that she had frequent colds. Respondent noted that the examination was normal except for a dark tongue. Respondent noted a family history of vaccine reactions, which was the same family history as for Patient 1. Again, Respondent did not document review of prior medical records for Patient 2, or her relatives, that potentially could have provided more information about these vaccine reactions.

20. Respondent documented the plan as vaccine exemption. On or about March 20, 2019, Respondent provided a permanent vaccine exemption to polio, DTap, MMR, HIB, Hepatitis B, Varicella, Tdap, HPV, Influenza, and Covid vaccines.⁴ On or about August 17, 2021, Respondent uploaded this medical exemption to the CAIR database for Patient 2. In the database, Respondent documented "Other: Siblings with severe vaccine reactions" as the medical basis for exemption for each of these vaccines.

21. Respondent did not document a history in Patient 2 that would support a medical exemption to any single vaccine. Respondent provided permanent medical exemptions for all of the routine childhood vaccines to Patient 2 without sufficient medical rationale for doing so.

Patient 3

22. Respondent saw Patient 3 on or about May 21, 2019. Respondent documented a family history of lupus, fibromyalgia, irritable bowel syndrome, and lichen sclerosis. Respondent further documented that Patient 3's step-brother had a vaccine reaction that caused fever and immobility for two weeks. Respondent did not document which vaccine caused this reaction, or any review of prior medical records of the step-brother regarding this vaccine reaction, which potentially could have provided more information about the reaction and which vaccine caused it.

23. On or about May 21, 2019, Respondent provided Patient 3 with a permanent vaccine exemption for polio, DTap, MMR, HIB, Hepatitis B, Varicella, Tdap, HPV, and Influenza

⁴ Covid did not exist on March 20, 2019. Respondent explained in his interview with Board investigators that he added the exemption for covid and flu vaccines, by handwritten note, after the fact. He did not update the record or exemption to accord with this fact.

1 vaccines. On or about March 31, 2021, Respondent submitted a medical exemption to the CAIR
2 database for Patient 3 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines,
3 citing "Other: vaccine reaction, brother" as the medical basis for the exemption. Respondent saw
4 Patient 3 on one other occasion, on or about May 14, 2021.

5 24. Respondent did not document a history in Patient 3 that would support a medical
6 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
7 the routine childhood vaccines to Patient 3 without sufficient medical rationale for doing so.

8 **Patient 4**

9 25. Patient 4 was a three-year-old girl when she saw Respondent for the first and only
10 time on or about August 28, 2018. Respondent documented a family history of psoriasis,
11 endometriosis, Lyme disease, diabetes, myeloma, and autism spectrum disorder. None of these
12 diseases were reported in any immediate family member. He further documented additional notes
13 about a family member having asthma following a vaccination, although these notes are difficult
14 to read and do not indicate which vaccine this was. On this basis Respondent issued a permanent
15 vaccine exemption for polio, DTaP, MMR, HIB, Hepatitis B, Varicella, and Tdap vaccines to
16 Patient 4.

17 26. On or about March 31, 2021, Respondent submitted a medical exemption to the
18 CAIR database for Patient 4 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV
19 vaccines, citing vaccine reaction in the family as the medical basis for the exemption.

20 27. Respondent did not document a history in Patient 4 that would support a medical
21 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
22 the routine childhood vaccines to Patient 4 without sufficient medical rationale for doing so.

23 **Patient 5**

24 28. Patient 5 was a three-year-old boy when he saw Respondent for the first and only
25 time on or about April 2, 2019. The record denotes a lengthy history of various diseases in non-
26 first-degree relatives. None of the diseases or illnesses are related to vaccines except a notation
27 that Patient 5's mother had fever and severe nausea after receiving a vaccine and that an uncle
28

1 had anaphylaxis “due to a shot.” The notes do not indicate which, if any, vaccines caused a
2 reaction.

3 29. On or about April 2, 2019, Respondent issued a vaccine exemption for Patient 5 for
4 polio, DTaP, MMR, HIB, Hepatitis B, Varicella, Tdap, HPV, and Influenza vaccines.
5 Respondent cited “three close relatives with severe vaccine reactions” and “family history
6 multiple autoimmune disorders” as the reasons for the exemptions. On or about May 17, 2021,
7 Respondent submitted a medical exemption to the CAIR database for Patient 5 for the DTaP,
8 HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines, citing “3 close relatives with severe
9 vaccine reactions” as the medical basis for the exemptions.

10 30. Respondent did not document a history in Patient 5 that would support a medical
11 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
12 the routine childhood vaccines to Patient 5 without sufficient medical rationale for doing so.

13 **Patient 6**

14 31. Patient 6 was a two-year-old boy when he saw Respondent for the first and only time
15 on or about May 2, 2019. He was noted to be a healthy child, who had not received any
16 vaccinations. Under “assessment,” Respondent documented that Patient 6’s brother had
17 experienced a vaccine reaction. The reaction is documented as being a high fever for four days
18 and leg swelling. A secondary reaction is noted as being a speech delay. There is further
19 notation of a family history of seizure disorder and diabetes.

20 32. The assessment notes family history of vaccine reaction in a brother, and the plan
21 indicates “VAX X” (vaccine exemption). On or about May 2, 2019, Respondent issued a
22 permanent vaccine exemptions for Patient 6 for polio, DTaP, MMR, HIB, Hepatitis B, Varicella,
23 Tdap, HPV, and Influenza vaccines. Respondent cited “patient and family medical history” as the
24 reason for the exemptions.

25 33. On or about April 17, 2021, Respondent submitted a medical exemption to the CAIR
26 database for Patient 6 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines,
27 citing “sibling with severe vaccine reactions” as the medical basis for the exemptions.
28

1 34. Respondent did not document a history in Patient 6 that would support a medical
2 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
3 the routine childhood vaccines to Patient 6 without sufficient medical rationale for doing so.

4 **Patient 7**

5 35. Patient 7 is the brother of Patient 6. He was a three-year-old boy when he saw
6 Respondent for the first and only time on or about May 2, 2019. Patient 7 was noted to have a
7 speech delay and a history of left-sided hydronephrosis.⁵ He was further noted to have had a
8 reaction to a vaccine causing a fever for several days and swelling to his leg. His family history
9 was positive for seizure disorder and diabetes.

10 36. On or about May 2, 2019, Respondent issued a permanent, blanket vaccine exemption
11 to Patient 7 with the reason documented as “patient and family medical history.” On or about
12 January 26, 2021, Respondent submitted a medical exemption to the CAIR database for Patient 7
13 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines, citing “prior vaccine
14 reactions” as the reason.

15 37. Respondent did not document a history in Patient 7 that would support a medical
16 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
17 the routine childhood vaccines to Patient 7 without sufficient medical rationale for doing so.

18 **Patient 8**

19 38. Patient 8 was a three-year-old girl when she saw Respondent for the first and only
20 time on or about October 17, 2019. She was noted to have been healthy until her brother was
21 born the previous year, and that she had been “sick a lot” after that. A family history of fibrous
22 dysplasia as well as irritable bowel syndrome and obsessive compulsive disorder is noted. Under
23 “Family History” Respondent referred to an attachment to the medical records. This attachment
24 contains a lengthy medical history of grandparents, aunts and uncles who were “vaccine
25 damaged.” These vaccine injuries are reported to have been cerebral palsy, sweats, convulsions,
26 joint swelling, and pain. A great-aunt was noted to have a vaccine reaction that “sent her to ICU
27

28 ⁵ Hydronephrosis is the swelling of a kidney, which can prevent urine from draining to the bladder.

1 for 4 weeks and almost died.” The specific vaccines and reactions are not noted except for the
2 maternal grandmother’s reaction.

3 39. On or about October 17, 2019, Respondent provided permanent vaccine exemptions
4 for Patient 8 for polio, DTap, MMR, HIB, Hepatitis B, Varicella, Tdap, HPV, and Influenza
5 vaccines. Respondent cited “family history multiple autoimmune disorders” as well as “patient
6 and family medical history—patient has chronic illness, four immediate family with severe
7 vaccine reactions” as the reasons for the exemptions. However, the records show that the family
8 members with reported vaccine reactions are not immediate family members of Patient 8, and
9 Respondent did not determine which vaccines had caused the reactions other than that the Rubella
10 vaccine affected the maternal grandmother.

11 40. On or about February 12, 2021, Respondent submitted a permanent medical
12 exemption to the CAIR database for Patient 8 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and
13 VAR/VZV vaccines, citing “four immediate family with severe vaccine reactions” as the medical
14 basis for the exemptions.

15 41. Respondent did not document a history in Patient 8 that would support a medical
16 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
17 the routine childhood vaccines to Patient 8 without sufficient medical rationale for doing so.

18 **Patient 9**

19 42. Patient 9 was 2-year-old girl when she saw Respondent for the first and only time on
20 or about April 13, 2019. Respondent documented that Patient 9 was “very healthy”, but that her
21 brother had experienced a vaccine reaction to the Dtap and rotavirus vaccines in which he was
22 lethargic and sick on the day of the vaccination, with a rash and unhappy for the following three
23 days. Respondent characterized this reaction as “a severe vaccine reaction” in the medical notes,
24 although this does not constitute a severe reaction within the meaning of the guidelines issued by
25 the ACIP and the American Academy of Pediatrics. An attached document lists that an uncle had
26 an “anaphylactic reaction to MMR vaccine,” but there are no additional records of this reaction.
27 The list further contains a summary of various health conditions without reference to vaccines in
28 other family members. The family history of vaccine reactions are not contraindications to

1 vaccination, nor are the medical issues in the family. In his assessment, Respondent documented
2 that Patient 9's brother had a vaccine reaction, and that the plan is to issue a vaccine exemption to
3 Patient 9.

4 43. On or about April 3, 2019, Respondent provided permanent vaccine exemptions for
5 polio, DTaP, MMR, HIB, Hepatitis B, Varicella, Tdap, HPV, and Influenza vaccines to Patient 9.
6 On or about December 12, 2021, Respondent uploaded a permanent medical exemption to the
7 CAIR database for Patient 9, for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV
8 vaccines, citing "severe vaccine reactions in two close family members" as the medical basis for
9 the exemptions

10 44. Respondent did not document a history in Patient 9 that would support a medical
11 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
12 the routine childhood vaccines to Patient 9 without sufficient medical rationale for doing so.

13 **Patient 10**

14 45. Patient 10 was a 10-year-old boy when he saw Respondent for the first and only time
15 on or about December 18, 2019. Respondent documents that Patient 10 had not received vaccines
16 or experienced any vaccine reactions. Records are present from another medical provider who
17 had issued Patient 10 a vaccine exemption previously, but that provider had not indicated a
18 medical reason for the exemption. Respondent documented that Patient 10's mother, aunt and
19 uncle had experienced a rash and fever from vaccines in the past. The specific vaccines are not
20 documented. There is no further medical records or follow up information on those reactions.
21 Respondent's health history is documented to include that Patient 10 had a history of various
22 symptoms including speech delay, insomnia, hyperactivity and mucus. Respondent documented
23 a family history of autoimmune disorders including celiac disease, multiple sclerosis, psoriasis,
24 and rheumatoid arthritis in unspecified relatives.

25 46. Respondent issued a permanent vaccine exemption for Patient 10 on or about
26 December 18, 2019, for "chronic complex illness," "patient and family medical history -3 close
27 relatives with vaccine reactions," and "family history of multiple autoimmune diseases."
28

1 47. On or about March 6, 2021, Respondent submitted a permanent medical exemption to
2 the CAIR database for Patient 10 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV
3 vaccines, citing chronic complex illness of the patient and family, and three close relatives with
4 vaccine reactions as the basis for the medical exemption.

5 48. Respondent did not document a history in Patient 10 that would support a medical
6 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
7 the routine childhood vaccines to Patient 10 without sufficient medical rationale for doing so.

8 **Patient 11**

9 49. Patient 11 was a three-year-old girl when she saw Respondent for the first and only
10 time on or about August 20, 2019. In her family history Respondent noted that her father had had
11 a fever after a vaccination, possibly at age 14, which resulted in an emergency room visit. Her
12 father was further noted to have psoriasis, and her mother to have granuloma annulare.
13 Respondent's assessment of Patient 11 included a family history of autoimmune disorders and
14 vaccine reaction. The plan was determined to be a vaccine exemption.

15 50. On or about August 20, 2019, Respondent issued a permanent vaccine exemption for
16 Patient 11 for all vaccines based on "patient and family medical history." On or about February
17 9, 2021, Respondent submitted a permanent medical exemption to the CAIR database for Patient
18 11 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines, citing "severe vaccine
19 reaction, parent" as the medical basis for the exemption.

20 51. Respondent did not document a history in Patient 11 that would support a medical
21 exemption to any single vaccine. Respondent provided permanent medical exemptions for all of
22 the routine childhood vaccines to Patient 11 without sufficient medical rationale for doing so.

23 **Patient 12**

24 52. Patient 12 is a female patient born in 2011. Respondent issued a vaccine exemption
25 to Patient 12 on or about April 25, 2017. As of October of 2021, Respondent did not maintain
26 any medical records for Patient 12 apart from the exemption itself. The stated reason for the 2017
27 exemption was "family history of autoimmune disease" and "family history of allergic reaction to
28 multiple vaccines."

53. On or about June 1, 2021, Respondent submitted a permanent medical exemption to the CAIR database for Patient 12 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines stating the medical basis for the exemption as “vaccine reactions.”

54. Respondent’s lack of medical records for Patient 12 renders his vaccine exemption to Patient 12 lacking any documented support or medical rationale for the exemption.

Patient 13

55. Patient 13 was a 10-year-old girl when she saw Respondent for the first and only time on or about August 17, 2021. Respondent documented an unremarkable examination. Under assessment he documented that Patient 13 has a family history of vaccine reaction to the rotavirus vaccine from her mother. Although in rare cases, a severe vaccine reaction in patient’s mother would be a contraindication or precaution to a specific vaccine, Respondent did not document review of prior medical records for the patient’s mother or state the specific nature of vaccine reaction other than documenting that it was “severe” and there were “residuals.”

56. On or about August 17, 2021, Respondent issued a permanent vaccine exemption to Patient 13 for all vaccines based on “mother with severe vaccine reaction plus residuals.” Respondent added a handwritten note to the exemption referencing covid-19, without updating the date on the document. On or about August 31, 2021, Respondent submitted a permanent medical exemption to the CAIR database for Patient 13 for the DTaP, HepB, Hib, IPV, MMR, Tdap, and VAR/VZV vaccines, citing “severe vaccine reaction, parent” as the medical basis for the exemption.

57. Respondent did not document a history in Patient 13 that would support a medical exemption to any single vaccine. Respondent provided permanent medical exemptions for all of the routine childhood vaccines to Patient 13 without sufficient medical rationale for doing so.

Patients 14, 15, and 16

58. The CAIR database maintained by the CDPH shows that Respondent issued permanent vaccine exemptions for at least three additional patients beyond the 13 patients described in detail above. On or about March 22, 2021, Respondent uploaded a vaccine exemption to the CAIR database for Patient 14, a child born on April 22, 2009. On or about

1 February 12, 2021, Respondent uploaded a vaccine exemption to the CAIR database for Patient
2 15, a child born on November 9, 2015. On or about March 6, 2021, Respondent uploaded a
3 vaccine exemption to the CAIR database for Patient 16, a child born on December 15, 2013.

4 59. Respondent failed to maintain any medical records for Patients 14, 15, and 16.
5 During his interview with Board investigators, Respondent stated that he provided the records for
6 these three patients to their guardians and did not maintain his own copy of the records.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Gross Negligence, Repeated Negligent Acts, Incompetence)**

9 60. Respondent is subject to disciplinary action under sections 2234 and/or 2234(b)
10 and/or 2234(c) and/or 2234(d) in that he engaged in unprofessional conduct and was grossly
11 negligent and/or repeatedly negligent and/or incompetent in his care and treatment of Patients 1
12 through 16.

13 61. Paragraphs 11 through 59, above, are incorporated by reference as if fully set forth
14 here.

15 62. Respondent was grossly and or repeatedly negligent and incompetent in his care and
16 treatment of Patients 1 through 16 for his acts and omissions including, but not limited to, the
17 following:

18 a. Providing permanent medical exemptions for multiple vaccines to Patients 1 through 13
19 without a valid reason to do so;

20 b. Providing inadequate documentation to support permanent medical exemptions for
21 multiple vaccines to Patients 1 through 11 and 13;

22 c. Failing to maintain any records for Patient 12 beyond the exemption itself;

23 d. Failing to maintain any records at all for Patients 14, 15, and 16;

24 e. Listing family history of autoimmune disorders, and other non-vaccine linked conditions
25 such as autism and cerebral palsy, as a valid medical reason to exempt patients from vaccination;

26 f. Considering minor vaccine reactions such as fever, transient behavior changes, headache,
27 rash, nausea, local swelling or pain, and abdominal pain as reasons to exempt a child from
28 vaccination, whether those reactions occurred in an immediate or extended family member;

1 g. Considering vaccine reactions, however severe, in a first-degree relative to be a
2 contraindication to a vaccine;

3 h. Treating reactions to any single vaccine as indicative of contraindications or precautions
4 to other dissimilar vaccines; and

5 i. Relying on his personal beliefs rather than medical science to support medical decisions
6 for his patients.

7 63. Respondent's conduct, as set forth above, constitutes gross negligence, incompetence
8 and/or repeated negligence in violation of section 2234, subdivisions (b), (c), and/or (d) of the
9 Code, thus subjecting Respondent's license to discipline.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Recordkeeping)**

12 64. Respondent is subject to disciplinary action under section 2266 of the Code in that he
13 failed to adequately and accurately maintain medical records for Patients 1 through 16. The
14 circumstances are set forth in paragraphs 11 through 59, above, which are incorporated here by
15 reference as if fully set forth herein.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(General Unprofessional Conduct)**

18 65. Respondent is subject to disciplinary action under section 2234 in that he engaged in
19 conduct which breaches the rules or ethical code of the medical profession, or conduct which is
20 unbecoming to a member in good standing of the medical profession, and which demonstrates an
21 unfitness to practice medicine, as alleged in paragraphs 11 through 59, above, which are
22 incorporated by reference and realleged as if fully set forth here.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 23826, issued to Stephen Banister, M.D.;
2. Revoking, suspending or denying approval of Stephen Banister, M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Stephen Banister, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
5. Taking such other and further action as deemed necessary and proper.

DATED: SEP 20 2022


WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SA2022300293